# National Labor Relations Board Weekly Summary of

## **NLRB** Cases

Division of Information	Washington, D.C. 20570	Tel. (202) 273-1991

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Press Release (<u>R-2650</u>): Maria Balzano is Appointed Regional Attorney in NLRB's Newark, NJ Regional Office

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Consolidated Equities Realty #3, LLC d/b/a Bob Townsend/Colerain Ford (9-CA-42545, et al.; 351 NLRB No. 64) Cincinnati, OH, Nov. 29, 2007. The Board adopted the administrative law judge's findings that the Respondent made the decision to lay off unit employees after the Union had demonstrated its majority status in those units, and that the Respondent accordingly violated Section 8(a)(5) and (1) of the Act by failing to give the Union notice and an opportunity to bargain over the layoff decision. The Board rejected the Respondent's contention that the judge's findings demonstrated prejudice. [HTML] [PDF]

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Machinists District Lodge 34; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Cincinnati on Jan. 23, 2007. Adm. Law Judge George Carson II issued his decision March 26, 2007.

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Columbine Cable Company, Inc. (27-RC-8467; 351 NLRB No. 65) Arvada, CO Nov. 30, 2007. The Board, in a 2-1 decision, adopted the hearing officer's recommendation that an election held November 15, 2006 be set aside and a new election held. [HTML] [PDF]

Two late arriving voters were allowed to cast ballots, by agreement of the parties. However, the Board agent in charge of the election did not re-assemble the voting booth for these voters. Instead, they cast ballots on a counter in a break room. The Board agent and observers were positioned about 15 feet away, and could see each voter's back and left shoulder from their vantage point. Moreover, the voters' arm movements were fully exposed as they voted.

The panel majority (Chairman Battista and Member Schaumber) noted that "it is manifestly essential that employees be balloted in a secret election, for the secret ballot is a requisite for a free election." *The Royal Lumber Co.*, 118 NLRB 1015, 1017 (1957) (internal footnote omitted). Accord: *Northwest Packing Co.*, 65 NLRB 890, 891 (1946). Applying this standard, the majority concluded that the voting arrangements were "entirely too open and too subject to observation to insure secrecy of the ballot and freedom of choice by the employees in the selection of a bargaining representative." These circumstances "raise doubts concerning the integrity and secrecy of the election," even though there was no affirmative proof that any person actually saw how the ballots were marked.

Member Walsh, dissenting, agreed that the circumstances in which the two voters cast their ballots were not ideal. However, he rejected the idea that there was a per se rule that an election must be set aside whenever there is even a possibility that voter privacy has been compromised. Rather, the objecting party must show that "the manner in which the election was conducted raises a reasonable doubt as to the fairness and validity of the election." He concluded that the Employer failed to meet this burden. He noted that there was no evidence that anyone saw, or attempted to see, how the two employees voted. While both employees testified that they felt they should have been afforded more privacy, there was no objective evidence that

they were unable to (or did not) freely vote their choice. In his view, these facts simply do not establish any reason to question the validity of the election result.

(Chairman Battista and Members Schaumber and Walsh participated.)

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Wegmans Food Markets, Inc. (5-CA-33228; 351 NLRB No. 61) Hunt Valley, MD Nov. 29, 2007. The Board adopted the administrative law judge's decision, dismissing the complaint allegations that the Respondent violated Section 8(a)(3) and (1) of the Act by terminating employee Edwin R. Melhorn because he engaged in protected concerted activity, and that it violated Section 8(a)(1) by interrogating Melhorn about his union and protected concerted activities. The Board agreed with the judge's finding that Melhorn was not a credible witness. As Melhorn's testimony provided the only support for complaint's allegations, the Board found that there was no reliable evidence that Melhorn engaged in, or that the Respondent believed that he engaged in, protected concerted activity. On the same basis, the Board also found that there was no reliable evidence that the Respondent's supervisors interrogated Melhorn about such activity. [HTML] [PDF]

(Members Liebman, Schaumber, and Kirsanow participated.)

Charge filed by Edwin R. Melhorn, an individual; complaint alleged violations of Section 8(a)(3) and (1). Hearing at Baltimore, March 15, 16, and 19 and April 3, 2007. Adm. Law Judge Richard A. Scully issued his decision Aug. 3, 2007.

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#### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Land Air Express of New England, Inc. (Teamsters Local 317) Syracuse, NY Nov. 28, 2007. 3-CA-26198, 26199; JD-74-07, Judge George Alemán.

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#### NO ANSWER TO COMPLIANCE SPECIFICATION

(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the compliance specification.)

*Bunting Bearing Corp.* (Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers) (7-CA-43996, et al.; 351 NLRB No. 62) Kalamazoo, MI Nov. 29, 2007.

Parrotkeat Enterprises, Inc. d/b/a BG Electronics (Electrical Workers IBEW Local 134) (13-CA-42950; 351 NLRB No. 63) Schaumburg, IL Nov. 28, 2007.

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#### WITHDRAWAL OF ANSWER TO COMPLIANCE SPECIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgement based on the Respondent's withdrawal of its answer to the compliance specification.)

*Third Garage, LLC* (Teamsters Local 657) (16-CA-24373; 351 NLRB No. 60) Harlingen, TX Nov. 29, 2007.

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## LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

DECISION [granting Union's exceptions] AND ORDER REMANDING [case to Regional Director for a hearing and supplemental report]

*Mille Lacs Health System*, Onamia, MN, 18-RD-02606, Nov. 28, 2007 (Members Liebman, Schaumber, and Kirsanow)

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(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

#### DECISION AND CERTIFICATION OF REPRESENTATIVE

Loftus Electric, Inc., Stanhope, NJ, 22-RC-12789, Nov. 28, 2007 (Members Liebman and Kirsanow; Member Schaumber dissenting)

Green Gold Development Corp., Brooklyn, Bronx, Manhattan, Queens and Staten Island, NY, 29-RC-11164, Nov. 30, 2007 (Members Liebman, Schaumber, and Kirsanow)

Columbus Construction Corp., Brooklyn, Bronx, Manhattan, Queens and Staten Island, NY, 29-RC-11200, Nov. 30, 2007 (Members Liebman, Schaumber, and Kirsanow)

### DECISION, ORDER [setting aside election conducted on 9/24/07] AND DIRECTION OF SECOND ELECTION

*Princeville Hotel LLP d/b/a Princeton Resort,* Princeville and Kauai, HI, 37-RC-4161, Nov. 26, 2007 (Members Liebman, Schaumber, and Kirsanow)

## DECISION AND DIRECTION [that Regional Director open and count ballot]

KOA Hotel LLC d/b/a Sheraton Keauhou Bay Resort & Spa, Kona, HI, 37-RC-4164, Nov. 27, 2007 (Members Liebman, Schaumber, and Kirsanow)

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(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

HDS Retail North America, Inc., Newark, NJ, 22-RM-752, Nov. 26, 2007 (Chairman Battista and Members Schaumber and Kirsanow)

*Point Park University,* Pittsburgh, PA, 6-RC-12276, Nov. 28, 2007 (Members Liebman, Schaumber, and Kirsanow)

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Puget Sound Energy, Inc., Belleville, WA, 19-RC-14969, Nov. 28, 2007 (Members Liebman, Schaumber, and Kirsanow)

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#### Miscellaneous Board Decisions and Orders

ORDER VACATING [Decision and Direction of Second Election dated 11/26/07 and substituting Decision and Direction of Runoff Election]

Princeville Resort, Princeville and Kauai, HI, 37-RC-4161, Nov. 28, 2007